

**COMMONWEALTH OF KENTUCKY  
EXECUTIVE BRANCH ETHICS COMMISSION  
CASE NO. 12-006**

**IN RE: MICHAEL FITZGERALD  
ALLEGED VIOLATION OF KRS CHAPTER 11A**

**INITIATING ORDER  
Initiation of Administrative Proceeding  
And Formal Complaint**

The Executive Branch Ethics Commission (the “Commission”), upon its own motion, initiated a preliminary investigation of Michael Fitzgerald (the “Respondent”), pursuant to KRS 11A.080(1), on May 14, 2012.

At all relevant times the Respondent was a “public servant” as defined in KRS 11A.010(9), and thus subject to the jurisdiction of the Commission.

The Commission initiated the preliminary investigation to determine whether it has sufficient probable cause to believe the Respondent violated provisions of KRS Chapter 11A (also referred to herein as the “Ethics Code”).

The Commission focused its investigation upon the Respondent’s possible violation of the Ethics Code by using his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influencing a public agency in derogation of the state at large; using his official position to give himself a financial gain and an advantage in derogation of the public interest at large; using his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; and failing to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

The Commission notified the Respondent of the preliminary investigation by

letter dated May 16, 2012, and the expanded investigation on July 3, 2012. During the course of the investigation, the Commission found probable cause to believe that violations of KRS Chapter 11A had occurred and voted on September 24, 2012, to initiate an administrative proceeding, pursuant to KRS 11A.080(4)(b) and KRS Chapter 13B, to determine whether the Respondent violated the Ethics Code as set forth in the Allegations of Violations, attached hereto and incorporated fully herein as Appendix A to this Initiating Order.

**IT IS THEREFORE ORDERED** that:

1. The Respondent shall file his answer to this Initiating Order within twenty (20) days from the date of service, verifying the truth and accuracy of any answer submitted.
2. The Respondent shall appear at a hearing to be scheduled by subsequent order and be prepared to defend against the Commission's allegations that he committed the Ethics Code violations set forth in the Allegation of Violations, attached hereto and incorporated fully herein as Appendix A to this Initiating Order.
3. A Hearing Officer will be designated by the Administrative Hearings Branch of the Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.
4. The Commission is represented by Kathryn H. Gabhart, General Counsel, and John R. Steffen, Executive Director. They may be contacted through the Commission's office at (502) 564-7954.
5. All original material shall be submitted to the Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601. A copy of all materials

shall be served on the designated Hearing Officer at the Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

6. The Respondent has the right to legal counsel during this proceeding. If the Respondent retains legal counsel, that person shall file an appearance with the Commission, and thereafter all correspondence from the Commission to the Respondent shall be mailed or delivered to the Respondent's attorney.

7. The Respondent has the right to examine upon request, at least five (5) days prior to the hearing, a list of witnesses the Commission expects to call at the hearing, any evidence that will be used at the hearing and any exculpatory information in the Commission's possession.

8. The Respondent has the right to subpoena witnesses on his own behalf. If the Respondent subpoenas witnesses, he shall pay for all costs associated with the subpoenas' issuance, including any applicable witness fees.

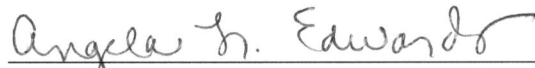
9. If the Respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default pursuant to KRS 13B.050(3)(h).

10. The Respondent has a right to appeal any final Commission order to the Franklin Circuit Court within thirty (30) days of service.

11. This proceeding is subject to KRS Chapter 11A, the Commission's regulations, the provisions of KRS Chapter 13B, and any Order issued by the Commission or its hearing officer issued during this administrative proceeding.

So ordered this 24th day of September 2012.

**EXECUTIVE BRANCH ETHICS COMMISSION:**



Angela Edwards, Chair



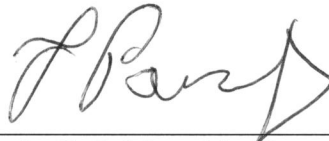
W. David Denton, Vice-Chair



William L. Knopf, Member



William G. Francis, Member



Lewis G. Paisley, Member

**APPENDIX A  
CASE NO. 12-006  
INITIATING ORDER**

**ALLEGATION OF VIOLATIONS**

The Respondent, Michael Fitzgerald, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Department of Agriculture. As such, the Respondent was subject to the jurisdiction of the Commission. KRS 11A.010(9)(h).

During the course of its preliminary investigation, the Commission found probable cause to believe that Michael Fitzgerald committed the following violations:

**COUNT I**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during January, February and March 2012, Fitzgerald used his state-issued email account and Department letterhead to endorse a private company to provide organic certification inspections and services to out-of-state organic product producers for which the Department chose to no longer provide such services on January 17, 2012. Fitzgerald used this private company to certify his private organic farm located in Henry County, Kentucky. Fitzgerald also used his endorsement of this private company to support his solicitation of said producers for his business of conducting private inspections and to generate business for the private company for which he sought to serve as an independent contractor.

These facts constitute violations of KRS 11A.020(1)(a), (c) and (d).

KRS 11A.020(1)(a), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:
  - (a) Use his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest;  
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  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;  
or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

## COUNT II

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during 2010, 2011, and 2012, Fitzgerald, during time he was working for the Department, used his state-issued email account and state-issued cell phone to solicit and to arrange dates and times that he would perform inspections for out-of-state organic product producers.

These facts constitute violations of KRS 11A.020(1)(a), (c) and (d).

KRS 11A.020(1)(a), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:

- (a) Use his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest;

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- (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;  
or
- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

### **COUNT III**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; and failed to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

Specifically, during 2010 through 2011, Fitzgerald, performed inspections at the locations of out-of-state organic product producers, which was outside of his regular job duties, while collecting a private fee, while oftentimes on state time and driving a state vehicle.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d), and KRS 11A.020(2).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:

- (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
- (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
- (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

KRS 11A.020(2) provides:

- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

#### **COUNT IV**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during 2010 through 2011, Fitzgerald used a state vehicle for no apparent work-related reason. Fitzgerald cited on the vehicle sign out logs that he was taking a state vehicle to perform “inspections,” but performed no corresponding inspections either for out-of-state or in-state organic product producers and did not create any corresponding inspection records indicating that he had conducted such inspections during that year. Fitzgerald also cited



using the state vehicle to perform specific in-state inspections that were never actually performed and no record was generated to indicate an inspection was ever conducted.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:
  - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
  - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

## **COUNT V**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; and failed to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

Specifically, during 2010 and 2011, Fitzgerald performed private inspections for out-of-state organic product producers who had also requested to be certified by the Organic Program for which he was responsible, but Fitzgerald failed to ensure that these same producers' applications received the appropriate first review, final review or certificate, which was part of his job duties with the Department.

Such conduct resulted in no oversight of Fitzgerald's privately conducted inspections, could have resulted in the Department issuing certificates that would not otherwise of been issued, and jeopardized the validity of the certificates that were issued by the Department in derogation of the state and public interest.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d) and KRS 11A.020(2).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:
  - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
  - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

KRS 11A.020(2) provides:

- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

## **COUNT VI**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; and failed to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

Specifically, during 2010 and 2011, Fitzgerald conducted the first review, final review, and signed the certificate for organic product producers despite having the responsibility as supervisor of the Organic Program to ensure that at least two individuals performed such functions as required by the federal rules applicable to the organic certification. Fitzgerald also performed the private inspections for these producers and accepted fees for performing the inspections.

Such conduct resulted in no oversight of Fitzgerald's privately conducted inspections, could have resulted in the Department issuing certificates that would not otherwise of been issued, and jeopardized the validity of the certificates that were issued by the Department in derogation of the state and public interest.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d) and KRS 11A.020(2).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:

- (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
- (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
- (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

KRS 11A.020(2) provides:

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

## **COUNT VII**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; and failed to avoid all conduct which might in any way lead members of the general public to conclude that he was using his official position to further his professional or private interest.

Specifically, during 2010 and 2011, Fitzgerald submitted inspection reports to the Organic Program for private inspections that he claimed to have performed and had garnered a fee for performing for out-of-state organic product producers that he had not actually performed, could not have physically completed in the time allotted, or for which he performed insufficient

and incomplete inspection reports. Fitzgerald's deficient inspection reports for the out-of-state producers influenced his Department to issue certificates to producers that might not have otherwise received certification had proper inspections been completed in derogation of the public interest.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d) and KRS 11A.020(2).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:
  - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
  - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

KRS 11A.020(2) provides:

- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

## **COUNT VIII**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his

official position to give himself a financial gain and an advantage in derogation of the public interest at large; and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during 2010 and 2011, Fitzgerald either forged or ensured the forgery of the signature of his supervisor on certificates that were issued to out-of-state organic product producers certified by the Organic Program, for which he maintained responsibility, in matters in which he had also performed the private inspections for a fee.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (2) No public servant, by himself or through others, shall knowingly:
  - (c) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
  - (d) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

## **COUNT IX**

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; and used his official position to secure or create privileges, exemptions,

advantages, or treatment for himself in derogation of the public interest.

Specifically, in 2011, Fitzgerald sold hay from his personal organic farm to an organic product producer certified under the Department's Organic Program, for which he maintained responsibility, and to which he had issued a Notice of Noncompliance a few months prior.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c) and (d).

KRS 11A.020(1)(a), (b), (c) and (d) provide:

- (3) No public servant, by himself or through others, shall knowingly:
  - (e) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
  - (f) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

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